

DOCUMENT RESUME

02661 - [A1652651]

[Request for advance decision on Payment of Claim]. B-187746.  
June 7, 1977. 4 pp.

Decision re: South Dade Auto Parts; by Robert F. Keller, Deputy  
Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: National Defense: Department of Defense -  
Procurement & Contracts (058).

Organization Concerned: Department of the Air Force.

Authority: Forfeiture Statute (28 U.S.C. 2514). Harrison Co. v.  
United States, 101 Ct. Cl. 412 (1944). David H. Miller et  
al. v. United States, Ct. Cl. No. 59-71.

The Deputy Director for Plans and Systems of the  
Department of the Air Force requested an advance decision as to  
the propriety of payment for a voucher submitted by a  
contractor. The payment of the claim was not authorized in its  
present form because it contained many errors. However, SAO did  
not recommend that the payment of the claim be withheld as  
subject to forfeiture. If the claim is resubmitted, free of  
error, and is otherwise proper, it may be paid after deduction  
of credits for any errors in prior months. (Author/SC)

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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-187746

**DATE:** June 7, 1977

**MATTER OF:** South Dade Auto Parts--Request for  
Advance Decision

**DIGEST:**

Payment of claim submitted by contractor is not authorized in its present form because it contains numerous errors. However, GAO does not recommend that payment of claim be withheld as subject to forfeiture under 28 U.S.C. 2514 (1970). If claim is resubmitted, free of error, and is otherwise proper, it may be paid after deduction of credits for any errors in prior months.

This is in response to a letter dated October 27, 1976, from the Deputy Director, Plans and Systems of the Department of the Air Force, forwarding a request for an advance decision as to the propriety of payment for a voucher submitted by South Dade Auto Parts.

J. P. Auto Parts, doing business as South Dade Auto Parts (South Dade), was the successful bidder on a Contractor Operated Motor Vehicle Parts Store (COPARS) solicitation No. F08621-76-90017, issued by Homestead Air Force Base, Florida. The solicitation covered two classifications of auto parts to be supplied by the contractor: "price listed" and "non-price listed" parts. "Price listed parts" are those parts covered by price lists submitted by the contractor prior to award. The contractor is compensated for these parts according to the listed price minus a discount specified in the bid. "Non-price listed parts" (NPL) are defined by the contract as follows:

"Non-Price Listed (NPL) Parts are those parts which are not included in any published price list incorporated in this contract. It is the intent of this contract that the contractor will supply these parts to the Government at the

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invoice price to the COPARS contractor, exclusive of any mark-up, profit, overhead, or administrative expense not provided for in this contract. The service charge is intended as the sole compensation for these parts. Reimbursement to the contractor for his invoice price plus any applicable service charge provided by this contract, together with reimbursement of any authorized transportation and communications charges, will constitute full payment for NPL parts (reference Special Provision 17)."

South Dade started operations at Homestead in August 1975. In February 1976, South Dade submitted a claim for price listed and non-price listed parts it supplied to the Government during January 1976. However, Homestead Base Finance discovered that South Dade was apparently billing the Government on non-price listed parts without taking into account the discounts given by its suppliers. Consequently, the contracting officer informed South Dade that payment was being withheld due to apparent irregularity, collusion or fraud with regard to the claim.

The Air Force has requested this Office to determine whether payment of South Dade's claim is subject to forfeiture. The Forfeiture Statute, 28 U.S.C. 2514 (1970), reads as follows:

"A claim against the United States shall be forfeited to the United States by any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance thereof.

"In such cases the Court of Claims shall specifically find such fraud or attempt and render judgment of forfeiture."

The Court of Claims has held that a misstatement in an invoice is not of itself fraudulent absent Government proof of an intent to defraud. See Bar-Ray Products,

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Inc. v. United States, 167 Ct. Cl. 839 340 F.2d 343 (1964); Harrison Co. v. United States, 101 Ct. Cl. 413 (1944). That Court has recently held that contractor ineptitude and carelessness do not constitute actionable fraud absent proof of an intent to deceive the Government. In David H. Miller et al. v. United States, Ct. Cl. No. 59-71 (Decided February 23, 1977), the record indicated numerous instances where the contractor had billed the Government for materials not furnished and work not done. The court, emphasizing the chaotic and sometimes non-existent nature of the contractor's records, held that the record indicated "ineptitude as against a blatant intent to deceive," and thus did not support a False Claims Act counter-claim.

Here the file accompanying the request for an advance decision indicates that the claim submitted by South Dade contains several overstatements of its costs. One group of errors reflects the failure of the contractor to subtract certain discounts it received from some of its suppliers from the price it billed the Government. Such a subtraction is required by the non-price listed parts section of the contract, quoted above, since that section states that the price billed to the Government shall be the "invoice price to the COPARS contractor, exclusive of any mark-up."

South Dade has stated that the discounts which were not taken into account by it in billing the Government were additional discounts given by the supplier on an ad hoc basis. The record indicates that the invoices which accompanied the parts supplied to South Dade did not reflect this additional supplier discount. South Dade asserts that the fact that the Government was being charged in excess of South Dade's costs for non-price listed parts was not discovered on the monthly income statement since all purchases for the month, price-listed and non-price listed, were listed together.

Two other errors allegedly resulted from telephone requests for suppliers' prices made by the contractor's employees to suppliers' employees. The contractor has explained that the first such error occurred because the suppliers' employee quoted a retail price of

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\$280.00, which South Dade then charged the Government, rather than a dealer's price of \$125.00, which was the price the supplier subsequently billed the contractor. The contractor has stated that the second error occurred when the supplier's employee misstated the price of a part as \$121.00 rather than \$54.50, the price subsequently billed to the contractor by the supplier. The contractor's statement further explains that these two errors were not detected since the contractor did not compare the telephonically-received quotes with the bills subsequently submitted to it by the supplier. The contractor states that a cross-checking system was subsequently adopted to prevent such discrepancies.

While the record in the present case indicates, and the contractor has admitted, that numerous items on its claim were erroneous, we cannot say that the contractor intended to deceive the Government at the time the claim was submitted. Considering the most recent definition by the Court of Claims of what constitutes "fraud" for purposes of the forfeiture statute, referral of this matter would not be warranted.

Nevertheless, South Dade's claim may not be paid in its present form because it overstates the entitlement of the contractor. Consequently, the claim should be returned to the contractor with advice to correct and resubmit it. Also, there may be numerous incorrect amounts in South Dade's claims for prior months. If South Dade's resubmitted January 1976 claim is free of error, and otherwise proper, it may be paid after setting off any credits due for overpayments by the Government in prior months.

  
Deputy Comptroller General  
of the United States